

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

REBECCA FAUST,

Plaintiff,

v.

JAY INSLEE, Governor of the State of
Washington; CHRIS LIU, Director of
Enterprise Services,

Defendants.

CASE NO. C20-5356 BHS

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO
AMEND, DEFENDANTS'
MOTION TO DISMISS, AND
PLAINTIFF LEAVE TO AMEND

This matter comes before the Court on Defendants Jay Inslee ("Inslee") and Chris Liu's ("Liu") (collectively "Defendants") amended motion to dismiss, Dkt. 37, and Plaintiff Rebecca Faust's ("Faust") motion to amend, Dkt. 38.

On May 28, 2020, Faust filed an amended complaint against Defendants alleging that her constitutional rights have been violated by Inslee's emergency proclamations and Liu's denial of her application to hold peaceful protests at the state capital. Dkt. 28-1.

On June 11, 2020, Defendants filed an amended motion to dismiss. Dkt. 37. On June 12, 2020, Faust filed a motion for leave to amend. Dkt. 38. On June 30, 2020, Defendants responded to Faust's motion, stated that they did not oppose the motion, and requested

1 that the Court consider Faust's amended complaint when addressing their motion to
2 dismiss. Dkt. 39. Based on Defendants' concession, the Court **GRANTS** Faust's motion
3 for leave to amend and will consider her proposed amended complaint, Dkt. 38-2, as the
4 operative complaint.

5 On July 6, 2020, Faust responded to Defendants' motion to dismiss. Dkt. 41. On
6 July 10, 2020, Defendants replied. Dkt. 45.

7 In this case, Defendants move to dismiss Faust's amended complaint for lack of
8 jurisdiction and for failure to state a claim. Dkt. 37. The Court agrees with Defendants
9 on both issues. First, the Court lacks jurisdiction to consider the claims against Inslee
10 because he lacks the power to enforce any relevant portion of his proclamations. *See*
11 *MacEwen v. Inslee*, C20-5423 BHS, 2020 WL 4261323 (W.D. Wash. July 24, 2020).
12 The Court also lacks jurisdiction to consider claims for monetary relief against Liu
13 because the Eleventh Amendment prohibits "federal courts from hearing suits brought
14 by private citizens against state governments without the state's consent." *Id.* at *1
15 (quoting *Sofamor Danek Grp., Inc. v. Brown*, 124 F.3d 1179, 1183 (9th Cir. 1997)).
16 Therefore, the Court grants Defendants' motion as to Faust's claims against Inslee and
17 Faust's claims for monetary relief against Liu.

18 Second, it seems possible that Faust could maintain a claim for injunctive relief
19 against Liu under *Ex parte Young*, 209 U.S. 123 (1908). Faust alleges that Liu has a
20 direct connection to the denial of her permit to protest, which Faust alleges violates her
21 First Amendment rights. The problem, however, is that the complaint fails to clearly
22 articulate a claim for prospective relief. In other words, it is unclear whether Faust is

1 alleging injury based on purely past violations of her right to protest or whether she
2 intends to apply for future protests. Thus, the Court grants Defendants' motion on this
3 claim because Faust fails to clearly state a claim upon which relief may be granted. *Bell*
4 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (To survive a motion to dismiss, the
5 complaint does not require detailed factual allegations but must provide the grounds for
6 entitlement to relief and not merely a "formulaic recitation" of the elements of a cause of
7 action.).

8 Finally, in the event the court finds that dismissal is warranted, the court should
9 grant the plaintiff leave to amend unless amendment would be futile. *Eminence Capital,*
10 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Here, the Court is unable to
11 conclude that any amendment would be futile. Therefore, the Court grants Faust leave to
12 file an amended complaint.

13 In sum, the Court **GRANTS** Faust's motion to amend, Dkt. 38, Defendants'
14 motion to dismiss, Dkt. 37, and Faust leave to file an amended complaint. Faust shall file
15 an amended complaint no later than August 28, 2020. Failure to timely file an amended
16 complaint or otherwise respond will result in dismissal.

17 **IT IS SO ORDERED.**

18 Dated this 19th day of August, 2020.

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BENJAMIN H. SETTLE
United States District Judge